REPORT
on the Free Movement of Workers
in Slovenia in 2009-2010

Rapporteurs: prof.dr. Polonca Končar
(in collaboration with dr. Luka Tičar)
University of Ljubljana

November 2010
Contents

Introduction

Chapter I  The Worker: Entry, Residence, Departure and Remedies
Chapter II Members of the Worker’s Family
Chapter III Access to Employment: Private sector and Public sector
Chapter IV Equality of Treatment on the Basis of Nationality
Chapter V Other Obstacles to Free Movement
Chapter VI Specific Issues
Chapter VII Application of Transitional Measures
Chapter VIII Miscellaneous
SLOVENIA

Introduction

1. Legislation important from the viewpoint of the implementation of the workers' freedom of movement has not been amended or replaced by the new one during the period covered by this report. Some deficiencies (e.g. in relation to the transposition of art. 7 of the Directive 204/38/EC), assessed in the report for previous reference period, have not been removed.

2. The number of the EU citizens working in Slovenia remains to be relatively low. According to the statistics of the Employment Service of the RS there are 381 EU citizens who got employed in 2010 (in 2008: 930; in 2009: 271). Nearly half of them are the citizens of Bulgaria.

Due to the low level of the workers who are the EU citizens, probably, the issue of the freedom of movement is not discussed much with regard to the overall Slovenian migration policy. There were still no disputes registered and the information on the case-law is not included in the report.
Chapter I
Entry, Residence, Departure and Remedies

Texts in force
- Aliens Act (Ur. l. RS, No. 71/2008- ZTuji-UPB5-officially consolidated text, 41/2009-ZTuji-1E)
- Instructions for the Refusal of Entry into Slovenia (Ur. l. RS, No. 74/2006)

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

The amended Aliens Act has been adopted on 21 May 2009 in order to transpose two regulations into Slovenian legal order. The following regulations are implemented by the Act in force: Regulation 2252/2004, Regulation 529/2002, Regulation 562/2006 and the Regulation 380/2008. Most of the changed or added provisions of the Act relate to aliens in general. Only the amended Article 99.a (article in the chapter on penalty provisions) expressly covers EU citizens and their family members. According to paragraph 2 of article 99.a a fine ranging from EUR 100 to EUR 400 shall be imposed on the individual who is EU citizen, his family member or a family member of a Slovenian citizen, if he does not report a loss, a theft or an alienation of any other kind of the passport and/or other document. According to paragraph 3 of the same article the fine ranging from EUR 200 to EUR 830 shall be imposed on the individual, who is the EU citizen, his family member or the family member of the Slovenian citizen, if on demand of the policeman he does not prove his identity, or he does not show a confirmation or a permit, proving the legal residence and entrance into the county, or if he either lends his passport and/or other document to other person or uses the document of somebody else as his own document.

As regards the information on transposition of the articles 7(1a), 7(3 a-d), 8(3a), 14(4a-b), 17, 24(2) of Directive 2004/38, given in the 2008 report, it remains valid also for the reference period, covered by the present report. Deficiencies established in the last year report have not been removed yet. It is expected that they shall be removed by the amendments to the Employment and Work of Aliens Act.

2. SITUATION OF JOBSEEKERS

The situation in law, described in the previous report, has not changed. According to the Employment and Unemployment Insurance Act (Ur. l. RS, No. 5/1991, 107/2006-UPB1, 59/2007, 5/2008) citizens of EU shall be equal to Slovenian citizens with regard to rights and obligations provided for by this act. (Art. 4.c) This general point of departure is completed by the Employment and Work of Aliens Act (Ur. l. RS, No. 76/2007-ZZDT-UPB2-officially consolidated text). The Act has laid down that citizens of EU and EEA Member States and the Swiss Confederation and their family members shall be equal to Slovenian citizens with regard the rights and obligations in case of unemployment. They may be entered in the register of unemployed persons if they fulfil the conditions laid down in the law regulating employment and insurance against unemployment and if they reside in the Republic of Slovenia on the basis of a residence permit. (Art. 35.c) Employment Service of Slovenia and other
organisations/employers (employment agencies) which are granted authorisation to perform employment services on the basis of a concession contract, may perform these activities also in favour of EU and EEA citizens. (Art. 6.b)

3. OTHER ISSUES OF CONCERN

Nothing to report

Draft legislation

The Government is drafting amendments to the Employment and Work of Aliens Act. The public has been informed about them in May 2010. They are intended to: 1. transpose the Directive 2009/50/EC of May 2009 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, the Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals and (partly) Directive 96/71/EC into legal order of the RS, 2. remove some deficiencies established in relation to the legislation in force.

In relation to “improvements” and the inclusion of some precisions in the present text, the following changes can be mentioned:

In the chapter on free access to the labour market by citizens of member states of the EU, EEA and the Swiss confederation and the implementation of services with seconded workers the change of Article 35 a is proposed, according to which the work permit shall not be required any more when the citizens of EU, EEA Member States or the Swiss Confederation wish to become employed or self-employed in the RS.

In order to bring the wording of Article 35 č into line with the wording of the Aliens Act it is proposed that in the case of unemployment the citizens of EU, EEA Member States and the Swiss Confederation may enter in the register of unemployed persons if they fulfil the conditions laid down in the law regulating employment and insurance against unemployment and reside in the RS on the basis of a registration certificate and/or a permanent residence permit.

The Government is also preparing a draft of the Regulation of Labour Market Act. It shall replace the present Employment and Unemployment Insurance Act. At the present stage of the drafting procedure the following proposed and by their substance new article can be mentioned: The Employment Service of Slovenia shall pay contributions under the pension and invalidity insurance schemes in favour of an insured person who is the Slovenian citizen, the citizen of EU, EEA Member state, the Swiss federation or is an alien with the permanent residence permit under the following conditions: if the payment of the unemployment benefit came to an end but the person remains unemployed and there is utmost one year of service still missing to fulfil conditions for retirement (art. 68 of the draft act from April 2010))
Chapter II
Members of the Worker’s Family

1. THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION

Article 93.k of the Aliens Act has not been changed by the amendments adopted in May 2009. In the definition of family members of the EU citizen reference to ‘unmarried children’ is maintained. A registered partner is not covered by the definition, contained in this Act.

2. ENTRY AND RESIDENCE RIGHTS

As the provisions of the Aliens Act on entry and residence conditions required from third-country nationals have not been amended during the reference period, there is nothing new to report.

3. ACCESS TO WORK

Family members of EU or EEA Member States or the Swiss Confederation who are not citizens of an EU or EEA Member State or the Swiss Confederation may become employed or self-employed in the Republic of Slovenia without a work permit. They shall prove their right of free access to the Slovenian labour market through a residence permit of a family member for the purpose of family reunification. The regulation of the right of free access to the labour market by the third-country family members remained unchanged in the last reference period.

4. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

As regards rights in the case of unemployment the Employment and Work of Aliens Act (Ur.l.RS, No. 76/2007-ZZDT-UPB2-officially consolidated text) does not contain provision which would explicitly refer to third-country family members. According to Article 35 č Citizens of EU and EEA Member States and the Swiss Confederation and their family members shall be equal to Slovenian citizens with regard to rights and obligations in case of unemployment. They may be entered in the register of unemployed persons if they fulfil the conditions laid down in the law regulating employment and insurance against unemployment and reside in the Republic of Slovenia on the basis of a residence permit.

A very general provision can be found in the Employment and Unemployment Insurance Act (Ur.l. RS, No. 107/2006-ZZPB-UPB1-officially consolidated text. It has been laid down that the EU citizens shall be equal to Slovenian citizens with regard the rights and obligations provided for by this Act.
Chapter III
Access to employment: a) Private sector and b) Public sector

Texts in force
- Employment and Work of Aliens Act (Ur. l. RS, No. 76/2007- ZZDZ-UPB2-officially consolidated text)
- Aliens Act (Ur. l. RS, No. 71/2008- ZTuj-UPB5-officially consolidated text)
- Employment and Unemployment Insurance Act (Ur .l. RS, No. 107/2006-ZZZPB-UPB1-officialy consolidated text)

A) ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

a.1. Equal treatment in access to employment (e.g. assistance of employment agencies)

The information on the provision of employment services in favour of Slovenians, EU and EEA Member States citizens and to those third-country citizens with permanent residence permits has been provided in the 2008 National report. The legislation has not been changed. The information from the previous report can be completed with the following information:
In accordance with the Employment and Work of Aliens Act ( its provisions on records Article 35.h) Rules on work permits, registration and deregistration of work, and the employment and work performed by aliens (Ur. l. RS, No. 37/2008, 28/2009)) has to be taken into consideration:
1. In the Chapter VI. On registration of the work of nationals of the EU, the EEA and the Swiss Confederation and their families there is a provision on registration of employment according to which »the registration of a national of the EU, EEA or Swiss Confederation, or the registration of a family member of a national of the EU, EEA or Swiss Confederation for social insurance by an employer shall be considered the registration of employment«.(Article 55)
2. With regard of the performance of services it has been laid down by the Rules that the statement to the Employment Service on the performance of services (Article 35.f of the Employment and Work of Aliens Act) shall be considered registration of the performance of a service. (Article 56)

a.2. Language requirements

Nothing new to report

B) ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

b.1. Nationality conditions for access to position in the public sector

b.2. Language requirements

Nothing new to report.

b.3. Recognition of professional experience for access to the public sector

Legal situation described in the 2008 Report has not changed. According to the definition laid down by the said Act the »professional experience« means the years of service spent in performing functions for which the same level of education was required. It is up to the Government to lay down the length of professional experience that is required for the posts of administration officials, judiciary and local administration bodies. The Act is not expressly mentioning whether professional experience acquired in other EU Member State is to be taken into consideration when decisions are made within the recruitment procedures.

b.4. Other aspects of access to employment

Nothing to report.

Draft text


The general provision of the Employment and Unemployment Insurance Act shall be overtaken to the new act, according to which citizens of the EU and EEA Member States and the Swiss Confederation shall be equal to the Slovenian citizens as regards rights and obligations, laid down by the Act. (Article 7. of the draft) With the exception to the above mentioned Article 68 of the draft text and the provisions of the Chapter X, regarding the hiring out work of workers to a user undertaking (by the Slovenian or foreign one) no other reference to the EU citizens is made in the draft text.
Chapter IV
Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

Information in this respect has been given in the 2007 Report.

As regards working conditions in the public sector as a special issue under this chapter the Public Sector Salary System Act (Ur.l. RS, No. 1008/2009- ZSPJS-UPB13) can be mentioned. In the provisions relating to the allowance for the years of service (Article 25) it has been laid down that a public servant or a functionary is entitled to such allowance, which is a part of salary, for all years he/she has spent in employment within the country or abroad. Term ‘abroad’ obviously covers the years of service in the EU Member States, too.

2. SOCIAL AND TAX ADVANTAGES

General situation as laid down in Art. 7(2) of the Regulation 1612/68

As regards social advantages, we shall primarily focus on advantages deriving from article 7 of the Regulation 1612/68 EC. In other words, we shall limit our findings to issues that do not deal with rights legally based on social insurances as covered by Regulation 1408/71 EC.

The right to social assistance is regulated by the Social Assistance Act. This right includes social welfare services and social assistance benefits in cash as means-tested benefits. The Act regulates social, personal and family counselling, institutional care and similar services. According to the Act, aliens have the right to services and to financial assistance if they either fulfil the condition of nationality, or they are in possession of a permanent residence permit. System of social assistance does not cover special benefits for job-seekers. EU nationals are entitled to social assistance in cash if they fulfil the same general conditions as those applied for Slovene nationals. The persons, entitled to social assistance in cash, either have no income at all, or their monthly income is below the level of the basic minimum income (approximately 225 EUR). In case they have no income, the entitled persons receive the full stated amount; in other case, they are entitled to receive amounts representing the difference between own income and the above stated amount. When assessing the eligibility, both the already mentioned ceiling, as well as actual facts are taken into consideration: i) an individual or family has assets enabling subsistence, ii) all other rights have been exhausted (social assistance is the last of the rights within the system, eligible when all other subsistence options are exhausted) and iii) the person concerned is actively seeking opportunities to solve his/her situation. The latter is of particular importance to all those with the ability to work; they have to be registered with the Employment Service of Slovenia, participate in offered programmes of active employment policy and actively seek employment.

Family benefits are regulated by Parental Protection and Family Benefits Act. They comprise two groups of rights, one dealing with social insurance for parental protection and therefore based on paid contributions, the other based exclusively on state funds and therefore not connected with employment. Within the scope of the latter, there are three types of
benefits, where permanent residence is not condition for entitlement: Parental allowance, child benefit and partial payment for lost income.

Tax status of workers coming from EU Member States depends on their residency status according to the national tax legislation. Residents are liable to an income tax on their worldwide income (i.e. income derived in Slovenia as well as abroad), non-residents are liable to pay the tax on income received in Slovenia. According to Personal Income Tax Act, an individual, irrespective of his/her nationality, is a resident in Slovenia for personal income tax purposes if he has a formal residential tie with Slovenia or actual residential tie with Slovenia (has a habitual abode or centre of personal or economic interests or is present in Slovenia for more than 183 days in a taxable year).

Personal Income tax Act treats EU workers, resident according to tax legislation, in the same way as Slovenian workers, special treatment is provided for non-residents. This special treatment applies to tax exemptions and tax allowances. Non-residents are not obliged to pay an income tax out of capital profits and savings profits generated in Slovenia.

Non-residents can claim general allowance, seniority allowance and family allowance if an individual can attest that the taxable income gained in Slovenia amounts to at least 90% of his entire taxable income for the tax year. A non-resident claiming such allowances is obliged to file the same annual active income tax return that applies to residents.

Specific issues: the situation of jobseekers

The job seekers of the EU Member States enjoy the same rights and obligations as Slovenian job seeker. The Employment and Insurance against Unemployment Act that among others regulates the entire field of work and employment brokerage and the active employment policy applies for EU job seekers as well.
Chapter V
Other Obstacles to Free Movement

Nothing new to report
Chapter VI
Specific Issues

1. FRONTIER WORKERS

Nothing new to report

2. SPORTSMEN/SPORTSWOMEN

Nothing new to report

3. THE MARITIME SECTOR

In previous report it has already been pointed out that the Maritime code does not contain provisions on the employment relationships of seafarers. The employment contract of seafarers is partly regulated by the Employment Relationships Act. In the framework of the lately initiated discussions on the future amendments of the said Act the proposal has been made to propose a special act covering the employment issues of the seafarers.

All ships of the only one Slovenian ship company are under the flag of convenience. Seamen's union of Slovenia and the employer have in 2008 signed a collective agreement in accordance with international conventions (they are not expressly mentioned) relating to the employment relationships of the seafarers. Collective agreement is neutral in the sense that it does not mention the issue of the nationality of the seafarers.

4. RESEARCHERS/ARTISTS

Nothing new to report

5. ACCESS TO STUDY GRANTS

The system of scholarships as regulated with Scholarships Act (Ur.l. RS, No. 59/2007, 40/2009) is based on an equal treatment of EU students with their Slovenian counterparts. The Act regulates scholarships financed out of public funds, as well as those assigned by employers. The basic condition for the entitlement to a scholarship is that a potential holder is a secondary school education or higher education level student, or takes part in an education programme for adults (Art. 7/1). Among persons that can be entitled to a scholarship are also listed:
- nationals of EU Member States and their family members as defined in the Aliens Act, provided they have a permanent or temporary residence permit (Art. 8/1, point 3),
- employed or self-employed citizens of an EU Member State and their family members, provided they have a valid residence permit (Art. 8/1, point 4).
According to the available information from the administrative bodies deciding on entitlements to the state scholarship, the EU student must reside legally to run for a scholarship. That means that as soon as EU student is issued a residence registration certificate he/she can apply for a state scholarship under the same conditions as Slovene students. A condition of ‘temporary residence permit’ from the Art8/1, point 3, is in the context of a Scholarships Act fulfilled with a residence registration certificate.
Chapter VII
Application of transitional measures

There are no transitional measures being applied.
Chapter VIII
Miscellaneous

1. RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ART. 45 TFEU AND REGULATION 1612/68

There is no case-law regarding the above mentioned legal norms and/or the relationship between them. Nevertheless, we are aware that they share a common legal dimension. The fact is that Regulation 1408/71 (883/04) in principle takes precedence, as *lex specialis*, over the provisions of Regulation 1612/68. This means that whenever such a particular situation occurs, one has initially to examine whether a particular problem falls within the scope of Regulation 1408/71, or not. Despite a rather broad scope of Regulation 1408/71, the article 7 of Regulation 1612/68 must be taken into account. A worker who is a national of a Member State shall enjoy the same social and tax advantages as national workers. Advantages related to employment are not the only ones relevant; the same applies to those having a direct connection with the worker him/herself. Disability allowance for worker’s children, different advantages for large families, and the like, might for instance be considered social advantages.

According to some recent decisions of the Court (e.g. Hendrix), the Regulation 1612/68 might also have prevailing role in cases where the Regulation 1408/71 ought to apply. In *Hendrix* case a particular benefit (incapacity benefit for disabled young people) goes to those enumerated in annex IIa of Regulation 1408/71, for which the principle ‘lex loci domicili’ should apply. The court in *Hendrix* has ruled that this benefit for a disabled young people must be regarded as special non-contributory benefit, which may validly be reserved to persons who reside in a member state which provides that benefit, but has also emphasised that such legal solution must not entail an infringement of the rights of a particular person. National legislation should be interpreted in conformity with the Community law respecting the economic and social links of a person with the member state of origin.

In the Slovenian legal system there are three benefits belonging to the list of special non-contributory cash benefits from annex IIa of Regulation 1408/71: State pension, Income Support for pensioners and Maintenance allowance. All these benefits originate from Slovene pension system. These benefits are similar nature to the incapacity benefit to disabled young people from the Hendrix case, a nature of social corrective and are therefore compatible with the *Hendrix* ruling.

*State pension* is a special pension, intended for a person with permanent residence in the Republic of Slovenia who is not entitled to pension according to the Pension and Invalidity insurance Act, under a foreign public pension insurance scheme or according to other regulations, and whose own income does not exceed the income ceiling specified for the entitlement to pension support, has completed 65 years of age and was residing in the Republic of Slovenia for at least 30 years between the age of 15 and 65 (Art. 59). The state pension currently amounts to approximately 180 EUR.

1 Correct translation of the benefit called Income support for pensioners is *Supplementary allowance*.
**SLOVENIA**

*Maintenance allowance* is a benefit intended for a widow or a widower after the cessation of transitional allowance, provided he/she has registered with the Employment Office within 30 days after the date of exhaustion of the right to transitional allowance, and provided he/she fulfils the conditions for acquisition of the right to pension support with respect to his/her means (Art. 129/1). The right to maintenance allowance shall also apply to a widow or a widower who has lost the right to widow/widower's pension because he/she has not fulfilled 53 years of age, provided he/she has registered with the Employment Office within 30 days after the date of the loss of the right to widow/widower's pension (Art. 129/2). A widow or widower may acquire widow/widower's pension before the age of 53, if he/she was, after the death of the insured person, left with a child or several children entitled to survivor's pension by virtue of the deceased insured person and whom the widow/widower is liable to maintain (Art. 110/1). Maintenance allowance shall equal the amount of widow/widower's pension, but shall not exceed the amount of the rating base of a minimum pension (Art. 130/1), that is 535 EUR. A widow or a widower shall be entitled to maintenance allowance for up to 24 months after the cessation of payments of transitional allowance or widow/widower's pension (Art. 130/2).

*Supplementary allowance (Income support for pensioners)* is regulated by a special law, Supplementary Allowance Act (Ur. list RS. No. 10/2008-ZvarDod)). In principle, it is dedicated to recipients of old-age, invalidity, widow/widower's and survivor's pension with permanent residence in the Republic of Slovenia (Art. 4/1), whose pension does not attain the amount of 81.6% of the rating base of the minimum pension (approximately 440 EUR) and who along with his/her family member does not have other income and means that would enable subsistence (Art. 5). The pension support shall not exceed the difference between the particular pension and the sum of 440 EUR.

2. **RELATIONSHIP BETWEEN THE RULES OF DIRECTIVE 2004/38 AND REGULATION 1612/68 FOR FRONTIER WORKERS**

Since the Slovene legal system hasn’t got specific administrative or legal schemes for frontier workers, in addition to the EU rules, there is nothing to report on issue concerning relationship between Directive 2004/38 and Regulation 1612/68 for frontier workers.

3. **EXISTING POLICIES, LEGISLATION AND PRACTICES OF A GENERAL NATURE THAT HAVE A CLEAR IMPACT ON FREE MOVEMENT OF EU WORKERS**

Under Chapter I it has already been mentioned that amendments to the Employment and Work of Aliens Act are in the drafting procedure. The amended Act is supposed to introduce the “EU Blue Card”. The draft text gives the definition of the highly qualified employment (the employment of the third-country national which requires the adequate and special knowledge, confirmed by a high qualification certificate or by five years of professional experi-

---

2 Transitional allowance is another benefit, regulated by Pension and Invalidity Insurance Act, but is not part of the list in Anex II a of Regulation 1408/71.
ences, which may be comparable with high education and correspond to the profession or sector determined by the employment contract or by the binding employment offer) and the definition of the EU Blue Card (the permit which enables the holder to enter, reside and work in the RS). According to the draft amendments the Employment Service of the RS shall be the competent authority to follow the situation in the Slovenian labour market, to check in the admission process the fulfilment of the conditions and to approve the issue of the EU Blue Card.

4. NATIONAL ORGANIZATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE LAUNCHED

Nothing new to report.

5. SEMINARS, REPORTS AND ARTICLES

1. The 3rd Conference on the European and comparative law has been organised by the Slovenian Association for European Law on 25. and 26 March 2010 in Ljubljana. In relation to labour law and social security law issues the legal position of workers hired out by the temporary employment agency to a user undertaking, the freedom of movement and the EU citizenship, the legal position of workers in the case of the insolvency of employer, the impact of the ECJ decisions in the social security disputes and the implementation of the new Regulation on the coordination of the social security systems in EU were discussed. Titles of the respective papers are as follows:
   P. Končar, Pravni položaj oseb, ki opravljajo delo preko agencij za začasno zaposlovanje v EU.
   D. Senčur Peček, Svoboda gibanja in državljanstvo EU.
   L. Tičar, Pravni položaj delavcev ob insolventnosti delodajalca po Direktivi 94/2008/EU
   I. Žagar, Odraz odločitev Sodišča EU v socialnih sporih.
   G. Strban, Uveljavitev nove Uredbe o koordinaciji sistemov socialne varnosti v EU.

2. Doctoral thesis On the legal theory and practice in the field of sport in the EU has been defended by mag. Janez Kocjančič in March 2010 at the Faculty of Law of the University of Ljubljana. The author concentrated on the genesis of the EU law in the field of sport (from the viewpoint e.g. of human rights, free movement of workers, competition law). The issues like the sovereignty and the attempts of transnational implementation of the EU rules and whether it is suitable to use the general principle of the EU law in the field of sport are also object of the dissertation.